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AUG 10 1943
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943. No. 253.

ROBERT B. TWINING and MILLICENT SYNG BUNTING COPE TWINING, as natural guardians of ROBERT COPE TWINING and LOUISE RITTENHOUSE TWINING, minors, MILLICENT SYNG BUNTING COPE TWINING, MARGARETTA PORTER COPE, CALEB COPE, 3rd, HENRIETTA BUNTING COPE, remaindermen, and PORTER F. COPE, life tenant,

Petitioners,

vs.

LAND TITLE BANK AND TRUST COMPANY, Trustee,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA, U. S. A.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA; AND BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

To the Honorable, Harlan Fiske Stone, The Chief Justice, and the Associate Justices of the Supreme Court of the United States:

The petitioners above-named respectfully represent:

Summary and Short Statement.

1. The petitioners Commander Robert B. Twining, U. S. N., and Millicent Cope Twining, his wife, are the parents of Robert Cope Twining and Louise Rittenhouse Twining, Minors, and are citizens and residents of the State of Virginia.

The petitioners Margaretta Porter Cope, Caleb Cope 3rd, Henrietta B. Cope and Porter F. Cope, are citizens and residents of the State of Pennsylvania.

2. Porter F. Cope is the life tenant, and the other petitioners are vested remaindermen, of one-half a trust established by Deed June 10, 1898, of which the respondent Land Title Bank and Trust Company, Philadelphia, is Trustee.

The beneficiary of the other half interest is Caleb F. Cope, and his remaindermen.

3. The trustee received an offer of $20,000 for a parcel of real estate briefly described and known as 429 Market Street, Philadelphia, which had been acquired by deed in lieu of foreclosure of a mortgage at a cost to the trust of $77,000.

The petitioners opposed the sale. The other one-half interest approved the sale. Upon petition by the Trustee to the Orphans' Court of Philadelphia County for approval of the proposed sale, the matter was referred to

Robert T. McCracken, Esq., as Master, who concluded (substantially that if the property were his he would not sell for $20,000, but) that because of the theory of apportionment of the proceeds between life tenant and remaindermen set forth in the *Restatement of the Law of Trusts,* Section 241, the property should be sold to protect remaindermen. (Record pp. 222-249a)

4. The Orphans' Court approved the Master's recommendation, and the petitioners appealed to the Supreme Court of Pennsylvania, the Court of last resort.

The Supreme Court of Pennsylvania agreed with petitioners that the apportionment theory was not before the Court, *but,* disregarding the *rationale* of the Master affirmed the Decree directing the sale merely because just compensation, i. e. best cash price, is being received for the property; raising, *for the first time,* the federal question involved.

5. The property is assessed for local taxation at $34,000; under the provisions of the *Act of Assembly* (Pennsylvania) approved June 27, 1939, P. L. 1199, Section 13 (P. L. 1203); reading as follows:

> "Section 13. All property within the county now or hereafter made taxable by law, shall be valued and assessed by the assessors and by the board at the actual value thereof. In determining the actual value of property, the price at which the same would separately bona fide sell shall be considered but shall not be controlling."

Federal Question.

6. The federal question involved is:

Is it due process of law within the meaning of the first section of the 14th Amendment of the Constitution of the United States to deprive the petitioners of their property without their consent, in favor of

aonther person, because the offer is the best cash price obtainable at this time, and for no other reason?

Jurisdiction.

It does not appear that the question involved has heretofore been decided by your Honorable Court; in fact it does not appear that in any reported case anywhere a court has ordered the property of one citizen transferred to another in the absence of public interest or other reason, even though full compensation for such property was awarded to the owner thereof.

Thus the petitioners, by the Supreme Court of Pennsylvania acting under the purported authority of the *Revised Price Act* of the Pennsylvania Legislature, approved June 7, 1917, P. L. 388, as amended (20 PS 1561 et seq.), are being deprived of their property without due process of law within the meaning of the first section of the 14th Amendment of the Constitution of the United States, and a title, right, privilege and immunity within the meaning of Section 237 (b) of the Judicial Code.

WHEREFORE your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of your Honorable Court, directed to the Supreme Court of the Commonwealth of Pennsylvania, commanding that court to certify and send to your Honorable Court for its review and determination, on a day certain therein to be named, a full and complete transcript and the record of all proceedings in the case numbered and entered on its docket, No. 153, January Term, 1943, entitled: In re: Deed of Trust of PROVIDENT LIFE AND TRUST COMPANY, Executor and Trustee under the Will of CALEB COPE, Deceased, Caleb F. Cope, Gertrude R. Cope, his wife, and Porter F. Cope, dated June 10, 1898. Appeal of Porter F. Cope, Henrietta B. Cope, Millicent Cope Twining, Margaretta Porter Cope and Caleb Cope, 3rd, and that the judgment of said Court entered May 10,

1943 (reargument denied May 24, 1943) be reversed by your Honorable Court, and that your petitioners may have such other and further relief in the premises as to your Honorable Court may seem meet and just.

HENRY D. O'CONNOR,
Attorney for Petitioners.